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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Policies and Rules Implementing	)	CC Docket No. 93-22
the Telephone Disclosure and	)	RM-7990
Dispute Resolution Act	)	

AT&T REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, American Telephone and Telegraph Company ("AT&T") hereby replies to the comments of other parties on the Commission's NPRM,[1] which proposes rules to protect consumers from abusive practices in connection with "pay-per-call" services.[2]

The comments overwhelmingly support the Commission's initiative to implement Title I of the Telephone Disclosure and Dispute Resolution Act ("TDDRA").[3] Like AT&T, many parties recognize the need for certain modifications in the proposed regulations to more effectively serve the Commission's goals and the requirements of the TDDRA. In particular, the comments

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1 Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22 and RM-7990, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 93-87, released March 10, 1993 ("NPRM").

2 A list of the commenters is attached as Appendix A.

3 Pub. L. 102-556, codified at 47 U.S.C. § 228.

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List A B C D E

demonstrate the need for the Commission to define "presubscription" offerings excluded from pay-per-call treatment; to articulate reasonable enforcement standards for carriers charged with assuring compliance by information providers ("IPs") with TDDRA; to refrain from adopting an unenforceable prohibition against carrier billing of tariffed charges for collect audiotext services; and to avoid imposing unwarranted and onerous obligations on carriers to refund charges imposed by IPs for those sponsors' unlawful pay-per-call programs. AT&T in this reply addresses these issues raised by the comments.

Definitions and Limitations on Pay-Per-Call Services

The statutory definition of pay-per-call services excludes charges assessed on a customer by an IP under "a presubscription or comparable arrangement." Many commenters, including AT&T, support adoption by the Commission of an explicit definition of this term. Such action by the Commission will materially assist both IPs and carriers that provide them with 900 transmission service in determining whether particular programs are required to comply with the Commission's pay-per-call regulations.

As the NPRM explains(¶ 8 n.5), and as these parties recognize, the essential requisite for any presubscription arrangement is that it should be "made by subscribers prior to the initiation of a call" for which charges are assessed (emphasis supplied).[4] Several commenters urge the Commission to adopt (or to incorporate by reference) the definition of presubscription proposed by the Federal Trade Commission in its rules implementing Titles II and III of TDDRA.[5] That proposed regulation provides:

> "Presubscription or comparable arrangement means a contractual agreement established prior to the initiation of a pay-per-call service between a provider of pay-per-call services and a consumer. No action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating such a contractual agreement."[6]

In AT&T's view, the FTC definition adequately serves the essential consumer protection principles which

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4 See Amalgamated, p. 4; NACAA, p. 3; NAIS, p. 3; Sprint, p. 3. The Commission's requirement that presubscription take place on a call separate from the pay-per-call program forecloses Prodigy's argument (p. 5) that presubscription may also include "online interaction in the course of a single call, albeit 'prior to' the assessment of any charges." The Commission's requirement is clearly warranted; otherwise, IPs could readily structure virtually all of their programs so that customer's "presubscribe" to them at the start of a call, and thereby could entirely evade regulation under the pay-per-call rules.

5 Amalgamated, p. 3; U S WEST, pp. 10-11.

6 See proposed 16 C.F.R. § 308.2(e). In the FTC proceeding, AT&T has suggested clarification of that agency's proposed rule to specify that it excludes calls billed to calling cards, so as to protect a customer's right to dispute "telephone-billed purchases" under those FTC regulations. See AT&T Comments filed April 9, 1993 in Proposed Telephone Disclosure Rule, FTC File No. R 311001, p. 5.

underlie the statutory exemption for presubscription from the Commission's pay-per-call rules. Specifically, such advance arrangements should provide callers the same complete information regarding the prices, terms and other conditions of a program to which the caller would be entitled under the Commission's pay-per-call rules.[7]

At the same time, the FTC definition provides consumers and IPs sufficient flexibility to fashion arrangements that serve the specific needs of customers and the particular circumstances of the programs furnished to them. For example, it is not necessary, as NACAA contends (p.3), that presubscription arrangements be reflected solely in written agreements between customers and IPs.[8] In analogous contexts, such as presubscription to a primary interexchange carrier, the Commission has explicitly recognized that customers may validly designate their selections through verbal, non-written means.[9] There is no reason to depart from that

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[7] See AT&T Comments, p. 3; see also NAIS, p. 4.

[8] As NAIS shows (p. 4), IPs could provide disclosure to customers of the price and other terms of a pay-per-call program over a separate telephone line and, if the customers verbally agree to those terms, provide those consumers personal identification codes with which to access the pay-per-call service. See also AT&T, pp. 3-4.

[9] See Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, Report and Order, 7 FCC Rcd. 1038 (1992).

well-established practice in the case of presubscription to pay-per-call programs. AT&T therefore urges the Commission to adopt a definition of presubscription that accords with the definition adopted by the FTC.[10]

Termination of Service to IPs

Like AT&T, almost all parties support the Commission's proposed requirement that carriers must terminate pay-per-call programs, by disconnecting the underlying transmission service, when the carrier "knows or reasonably should know" that the service is not being offered in compliance with TDDRA and Commission or FTC regulations. Moreover, the majority of parties concur with AT&T's showing (Comments, pp. 4-5) that neither TDDRA nor the Commission's proposed regulations require carriers actively to police the preambles, contents or advertising of pay-per-call programs.[11] Rather, as AT&T

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[10] AT&T also agrees with those commenters who contend that a telephone company calling card should be deemed a "credit or charge card" for the limited purpose of the Commission's proposed §64.1504, which bars use of 800 numbers to provide pay-per-call programs except when customers authorize charges to such alternative billing methods. See NPRM, ¶¶ 29;30; BellSouth, p. 3; Amalgamated, p. 5.

[11] For example, IIA correctly points out (p. 19) that any such requirement would "burden[carriers] with regulatory oversight responsibilities involving the content of the service for which they should only be required to offer common carriage," and would "turn[] telephone common carriers into 'pay-per-call police.'" Accord, BellSouth, p. 2; GTE, pp. 12-13; PacBell, p. 10; Phone Programs, p. 7.

showed and other parties agree, a carrier should only be obligated to invoke the termination requirement when it becomes aware that a service is being offered in violation of TDDRA or applicable regulations, or when it receives a report which would reasonably lead the carrier to investigate the lawfulness of a pay-per-call program.[12]

Several parties erroneously contend that the Commission must prescribe specific procedures which carriers would be required to follow in terminating a pay-per-call program. For example, some IPs claim that carriers should be precluded from terminating service absent a specific Commission finding that a program is being offered unlawfully, and that any carrier-imposed termination should be subject to immediate judicial review.[13]

These proposals ignore TDDRA's express directive that carriers "shall terminate" service when it learns that a pay-per-call program is being offered unlawfully.[14] As the NPRM notes (¶ 10), because expedited termination of unlawful pay-per-call programs "advance[s]

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[12] AT&T, pp. 4-5; MCI, p. 5 (investigation required "only after there is a pattern of complaints, which become known to the carrier"); Sprint, p. 7 (standard for reasonable belief should be "one or more complaints . . . about the service").

[13] AIPNY, pp. 2-4; IIA, p. 9; Phone Programs, p. 7.

[14] TDDRA, 47 U.S.C. § 228(c)(2)(emphasis supplied).

the protective purposes of the TDDRA," the statute contemplates prompt termination of the unlawful program "after a short period during which an IP may respond to a carrier's written notification of planned termination." This procedure adequately addresses any legitimate interest the commenters may have in receiving notice and an opportunity to be heard prior to termination of a program. There is no need for the Commission to specify additional steps carriers must follow before program termination occurs.[15]

Service Interruption/Disconnection for Collect Charges

AT&T does not provide Premium Billing for pay-per-call programs placed to end users via collect calls and, like the overwhelming majority of commenters, fully supports the Commission's proposed rules (*see* *NPRM*, ¶¶ 20-21) limiting carrier billing for collect audiotext calls and prohibiting disconnection or interruption of end users' basic service for failure to pay the nontariffed sponsor charges for those calls.[16] However,

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[15] Proposals by other parties (*e.g.*, Consumer Action, p. 2; NACAA, p. 4) that the Commission prescribe specific timetables for disconnection are also [illegible]

the proposed rules should not be extended to include the tariffed charges for the underlying collect call, as the NPRM (¶ 21) proposes. This is because, as the comments of AT&T (pp. 8-9) and other carriers unanimously confirm, it is not possible to determine at the time of collect acceptance whether a call will be used to transmit audiotext.[17] Accordingly, the Commission should clarify the proposed rules to make explicit that they apply only to the non-regulated charges incurred for collect audiotext calls.

Billing Information Disclosure

There is widespread agreement among the commenters that the Commission should not require carriers billing for pay-per-call programs to include the name, address and other information regarding each IP in bills with pay-per-call charges.[18] Like AT&T, these parties recognize that customers can readily obtain this information from the carrier in the event of a billing dispute, using the toll-free number established for that purpose pursuant to the Commission's existing pay-per-call regulations. Those few commenters[19] who nevertheless

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[17] See Ameritech, p. 4; Bell Atlantic, p. 3; CBT, p. 2; GTE, p. 4; PacBell, p. 10; SNET, p. 4; U S WEST, pp. 23-24.

[18] See Ameritech, p. 6; IIA, p. 16; MCI, p. 6; PacBell, p. 10; Phone Programs, p. 9; SWBT, p. 8; Sprint, p. 17; U S WEST, p. 26.

[19] Consumer Action, pp. 5-6; NACAA, pp. 9-10.

insist on provision of this duplicative information in customer bills fail to acknowledge that this information is conveniently available to customers through other means, and these parties do not even attempt to show any customer benefit that could justify the additional expense of furnishing the data on the bills themselves. These parties likewise fail to recognize that the Commission need not require carriers to provide a disclosure statement explaining the steps required to dispute pay-per-call charges, because the FTC in its companion rulemaking has already proposed to require periodic distribution of such a statement.[20]

Refunds of Charges

AT&T's Comments showed (pp. 10-12) that the Commission's proposed rule requiring carriers to make refunds to all customers that have been billed for a pay-per-call program which is later found to violate TDDRA or any federal law is overbroad and unduly burdensome. In particular, AT&T pointed out (id.) that substituting the billing carrier for the IP as the party primarily liable for reimbursing customers for unlawful pay-per-call charges does nothing to make IPs more likely to offer lawful programs, yet it subjects carriers to open-ended and potentially severe economic hardship.

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[20] See MCI, p. 7; USTA, p. 6.

Several parties express similar serious concerns regarding the proposed refund rule. For example, MCI points out (p. 8) that the rule as proposed requires refunds when the Commission or some other agency "determines" that a program violates federal law, even though TDDRA § 228(f)(1) provides for such relief only when the program "ha[s] been <u>found</u>" unlawful (emphasis supplied). MCI therefore notes that refunds may only be required when the Commission, the FTC, or a court of competent jurisdiction has adjudicated that a program is unlawful.[21] Other commenters recognize that, even with this limitation, carriers' potential exposure to the refund obligation requires further modifications. Thus, NAIS states (p. 18) that charges should only be refunded to customers who specifically request that relief. Moreover, NAIS suggests (<u>id.</u>) that refunds should be restricted to those claims filed 60 days after an adjudication of a program's unlawfulness. AT&T agrees that, in the event the Commission imposes primary liability for refunds on carriers, these suggested limitations should be adopted to at least ameliorate the serious adverse impact of the refund obligation.

The more appropriate solution, however, is for the Commission to recognize that imposing a refund

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[21] <u>Accord</u>, Amalgamated, p. 10; NAIS, p. 10; Phone Programs, p. 12.

liability on carriers who simply provide billing services on the IPs' behalf is not reasonably calculated to influence the conduct of IPs, who are solely responsible for the content of their programs and are the only parties able to conform them to legal requirements. Because the proposed refund rule thus is unlikely to accomplish the Commission's objective of promoting lawful pay-per-call programs, but would seriously burden the carriers at whom it is targeted, the Commission should

LIST OF COMMENTERS
CC Docket No. 93-22 (RM 7990)

Amalgamated MegaCorp ("Amalgamated")

American Public Communications Council ("APCC")

American Telephone and Telegraph Company ("AT&T")

Ameritech Operating Companies ("Ameritech")

Association of Information Providers of New York, Info Access, Inc. and American TelNet, Inc. ("AIPNY")

Bell Atlantic

BellSouth Telecommunications, Inc. ("BellSouth")

People of the State of California, and the Public Utilities Commission of the State of California ("California")

Cincinnati Bell Telephone Company ("CBT")

Consumer Action ("Consumer Action")

Cox Enterprises, Inc. ("Cox")

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE")

Information Industry Association ("IIA")

MCI Telecommunications Corporation ("MCI")

National Association of Consumer Agency Administrators ("NACAA")

National Association for Information Services ("NAIS")

National Association of Regulatory Utility Commissioners ("NARUC")

Newspaper Association of America ("NAA")

New York State Department of Public Service ("NYDPS")

NYNEX Telephone Companies ("NTCs")

Pacific Bell ("PacBell")

Phone Programs, Inc. ("Phone Programs")

Pilgrim Telephone, Inc. ("Pilgrim")

Prodigy Services Company ("Prodigy")

South Carolina Telephone Coalition ("SCTC")

Southern New England Telephone Company ("SNET")

Southwestern Bell Telephone Company ("SWBT")

Sprint Corporation ("Sprint")

Summit Telecommunications Corporation ("Summit")

Tele-Publishing, Inc.

United States Telephone Association ("USTA")

U S WEST Communications, Inc. ("U S WEST")

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 4th day of May, 1993, a copy of the foregoing "AT&T Reply Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

/s/ Ann Marie Abrahamson

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